STATEMENT SUBMITTED BY THE

AMERICAN MARITIME OFFICERS,

INTERNATIONAL ORGANIZATION OF MASTERS, MATES & PILOTS,

MARINE ENGINEERS' BENEFICIAL ASSOCIATION

AND THE

SEAFARERS INTERNATIONAL UNION

TO THE

SUBCOMMITTEE ON COAST GUARD AND MARITIME TRANSPORTATION

OF THE

COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE

ON

"THE STATE OF THE UNITED STATES MERCHANT FLEET IN FOREIGN COMMERCE"

July 20, 2010

Mr. Chairman and Members of the Subcommittee:

This statement is submitted on behalf of the American Maritime Officers (AMO), the International Organization of Masters, Mates & Pilots (MM&P), the Marine Engineers' Beneficial Association (MEBA) and the Seafarers International Union (SIU). We appreciate this opportunity to present our views on the "state of the United States merchant fleet in foreign commerce."

Our maritime labor organizations represent primarily ships' Masters, Licensed Deck Officers and Licensed Engineers**,** and unlicensed merchant mariners working aboard U.S.-flag commercial vessels operating in our nation's foreign commerce and domestic trades. The development and implementation of programs and policies that support this fleet, enhance its economic viability and increase its ability to compete for a larger share of America's foreign trade are extremely important to the jobs of the men and women our labor organizations represent. Consequently, we are extremely pleased that this hearing is being held and that we have been given the opportunity to present our views.

History has repeatedly proven that it is in the best interest of the United States to maintain and support a strong, active, competitive and militarily-useful privately-owned U.S.-flag merchant marine to protect, strengthen and enhance our nation's economic and military security. In times of war or other international emergency, U.S.-flag commercial vessels and their United States citizen crews have responded quickly, efficiently and effectively to our nation's call, providing the commercial sealift capability and civilian maritime manpower necessary to transport and support American forces overseas.

In 1992, General Colin Powell, then-Chairman of the Joint Chiefs of Staff, told the graduating class of the United States Merchant Marine Academy at Kings Point that:

> "Since I became Chairman of the Joint Chiefs of Staff, I have come to appreciate first-hand why our merchant marine has long

been called the nation's fourth arm of defense.

> "Fifty years ago, U.S. merchant vessels . . . were battling the frigid seas of the North Atlantic to provide the lifeline to our allies in Europe. The sacrifice of those mariners was essential to keeping us in the war until we could go on the offensive. . . In World War II, enemy attacks sank more than 700 U.S.-flag vessels And claimed the lives of more than 6,000 civilian seafarers . . .
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> "In war, merchant seamen have long served with valor and distinction by carrying critical supplies and equipment to our troops in far away lands. In peacetime, the merchant marine has another vital role – contributing to our economic security by linking us to trading partners around the world and providing the foundation for our ocean commerce."

Today, U.S.-flag vessels and their U.S. citizen crews are on the front lines in our nation's War against Terror. American vessels and crews carry the supplies and equipment our troops need, whenever and wherever it is needed. Simply put, the continued availability and utilization of U.S.-flag vessels and United States citizen crews provide the best way for our nation to support our troops – to do otherwise is to put the security of our forces overseas in the hands of foreign flag vessels and foreign crews.

Equally important, without a stronger, larger, and more competitive U.S.-flag shipping capability the United States may find itself – and our national economy – at great risk as we become even more dependent on foreign flag shipping operations for the carriage of our export – import trade. If Congress and the Administration do not take steps to attract and retain more vessels for the U.S.-flag, producers and shippers of U.S. commodities can find themselves hostage to foreign shipping interests who can easily dictate the terms and conditions that must be met before they are willing to carry America's commerce.

We believe therefore that it is important that our nation has the United States-flag commercial vessels and the trained and loyal United States citizen crews needed to support our troops, to protect and enhance America's economic interests at home and abroad, and to strengthen United States defense operations around the world.

We further believe that the best way to achieve these goals is for Congress and the Administration to support and fund the existing programs, and to enact those new programs, that enable vessels to remain and operate under the U.S.-flag.

MARITIME SECURITY PROGRAM

One of the cornerstones of American maritime policy is the Maritime Security Program (MSP).

Originally enacted as the Maritime Security Act of 1995 (Public Law 104-239), this statute allowed the Secretary of Transportation, in consultation with the Secretary of Defense, to establish and support a fleet of 47 privately-owned, militarily-useful U.S.-flag commercial vessels to meet the defense and economic requirements of our nation. This program was, by statute, scheduled to expire in ten years unless specifically reauthorized by the Congress.

In 2003, prior to the expiration of the Maritime Security Program, General John W. Handy, Commander in Chief, United States Transportation Command, told Congress that "as we look at operations on multiple fronts in support of the War on Terrorism, it is clear that our limited defense resources will increasingly rely on partnerships with industry to maintain the needed capability and capacity to meet our most demanding wartime scenarios. . . .MSP [Maritime Security Program] is a cost-effective program that assures guaranteed access to required commercial U.S.-flag shipping and U.S. merchant mariners, when needed . . . MSP is a vital element of our military's strategic sealift and global response capability."

Equally important, the Department of Defense testified that it would need more than $10 billion in capital costs and $1 billion in annual operations costs to replicate the commercial sealift capability and worldwide logistics network that the Maritime Security Program and the commercial maritime industry provide to the Department of Defense at a fraction of the cost: $174 million in FY'11 and $186 million in FY'12.

As a result, and with the support of the Department of Defense, legislation to extend, expand and enhance the Maritime Security Program was enacted in October 2003. As signed (Public Law 108-136), the Program (which runs through September 30, 2015) authorizes an increase in the maritime security fleet-to 60 militarily-useful privately-owned U.S.-flag commercial vessels. It further

authorizes an annual per vessel payment ($2.9 million in Fiscal Year 2011 and $3.1 million in Fiscal Year 2012) in order to help offset the enormous tax and other economic incentives given to foreign flag vessels and foreign crews by foreign governments.

The Maritime Security Program helps retain U.S.-flag vessels and their U.S. citizen crews for the United States and, more specifically, for the use of the Department of Defense in time of war or other international emergency. As of January 1, 2008, sixty-three (63) current or former United States-flag vessels enrolled in the Maritime Security Program participated in Operation Iraqi Freedom**.** Today, virtually all the military and defense-related cargo moving as a result of the surge operations in Afghanistan is carried by U.S.-flag vessels with U.S. crews, operating as part of the MSP. In fact, more than 85 percent of the supplies and equipment for Iraq and Afghanistan are carried aboard ships crewed by civilian American mariners.

In order to ensure the continued availability and operation of the MSP maritime security fleet, the Department of Defense requested, and the House Committee on Armed Services agreed to extend the Maritime Security Program for an additional ten-year period. Section 3502 of HR 5136, the National Defense Authorization Act of Fiscal Year 2011, extends MSP from fiscal year 2015 through fiscal year 2025. This extension gives the Department of Defense the opportunity to undertake long-term planning with the certainty that it can count on the ships, civilian maritime manpower and logistical resources that MSP provides.

We strongly support this extension of the Maritime Security Program. It demonstrates once again that the program works, and that it represents an effective, efficient and economical use of Federal resources.

We would point out that *ExpectMore.gov*, a web site developed by the Office of Management and Budget (OMB), contains the results of an assessment of every Federal program, including the Maritime Security Program. "Effective" is the highest rating a program can achieve and a rating of "effective" means that a program has "set ambitious goals, achieves results, [is] well-managed and improves efficiency." It is especially important to note that *ExpectMore.gov* has rated the Maritime Security Program as "Effective". Only 193 programs out of total 1,015 programs assessed by *ExpectMore.gov* received a rating of "effective".

In explaining why the Maritime Security Program has received the highest rating available under this OMB-developed web site, *ExpectMore.gov* states that "The

Maritime Security Program is an effective program that targets its resources to vessels that are militarily useful in times of need."

We urge that Congress enact this extension as quickly as possible and that the extended MSP continue to capitalize on the experience and expertise of both the Department of Defense and the Maritime Administration. In our opinion, one of the reasons why the MSP has worked so well is because the required collaborative relationship between DOD and MARAD ensure that our industry will serve both the economic and military requirements of our nation.

It is also essential that Congress approve funding for this program at the Congressionally-authorized level of $174 million for FY'11. Without full funding, it will be extremely difficult for the vessels in the maritime security fleet to remain under the U.S.-flag and the American maritime jobs and commercial sealift capability they provide to the economic and military security of the United States will be lost. In this context, we would also ask you and your colleagues work with the Maritime Administration and the Administration to ensure that the increase in funding for the MSP for FY'12 as authorized by the Congress in Public Law 108-136 is included in the Administration's FY'12 budget. As previously mentioned, the Congressionally authorized funding for the MSP increases from $174 million in fiscal year 2011 to $186 million in fiscal year 2012.

CARRIAGE OF U.S. GOVERNMENT GENERATED CARGOES

Another cornerstone of U.S. maritime policy that promotes the use of U.S.-flag vessels and furthers the economic and security interests of the United States are the cargo preference statutes. Taken together, these statutes require that a percentage of U.S. government cargoes be transported on U.S.-flag vessels if such vessels are available and available at fair and reasonable rates. Cargo preference statutes and policies provide U.S.-flag vessels with a critical base of cargo, and thereby give U.S.-flag vessels the opportunity to stay active while they compete against lower-cost and oftentimes tax-free foreign flag vessels for the carriage of commercial cargoes in the U.S. foreign trades. This in turn helps to ensure that the U.S.-flag vessels and their American crews remain available to the Department of Defense in time of war or other international emergency.

It is important that existing programs subject to U.S.-flag shipping requirements under the cargo preference program be fully funded and implemented in compliance with the law. We would urge, for example, that proposals to replace

the existing Food for Peace Program with a program that simply provides U.S. taxpayer dollars to other nations to be used by them to purchase foreign agricultural commodities and foreign shipping services should be rejected. As presently implemented, the Food for Peace Program provides U.S. agricultural commodities to needy nations and requires that a percentage of these commodities be transported on U.S.-flag vessels. While serving U.S. humanitarian and foreign aid objectives the Food for Peace program also provides a significant return to the American taxpayer by creating and maintaining American jobs, by generating income for American ports and the domestic agricultural and transportation industries, and by raising revenues for U.S. taxing authorities.

In short, the Food for Peace program is a program that should be emulated, not eliminated. American taxpayers and the Federal government should be proud that there is a Federal program that not only demonstrates the willingness and generosity of the American people to help the world's neediest people, but which at the same time results in significant economic and strategic benefits for our country.

It is equally important that all other Federally-funded cargoes are in fact transported in compliance with the existing cargo preference laws. We recently learned, for example, that the Department of Energy has concluded that the U.S.-flag shipping requirements contained in the Cargo Preference Act of 1954 do not apply to its Loan Guarantee Program under Title XVII of the Energy Policy Act of 2005. It has made this determination despite the fact that the U.S.-flag shipping requirements in the 1954 Act apply to all "guarantees made by or on behalf of the United States." Our maritime labor organizations have joined with a broad coalition of U.S.-flag shipping companies and associations to urge the Maritime Administration to work with DOE to ensure that the U.S.-flag shipping requirements in the 1954 Act are followed as DOE implements its Loan Guarantee Program. (Attached is the letter sent from the maritime industry to the Maritime Administration on this point)

We would note that the Duncan Hunter National Defense Authorization Act of 2009 (Public Law 110-417) gives the Maritime Administration greater authority to implement the cargo preference laws. We would ask this Subcommittee to do what it can to ensure that the Maritime Administration is not blocked in its efforts to demand full compliance with the cargo preference laws by other Federal agencies and to enforce full compliance by these agencies and the shippers responsible for arranging the transportation of these cargoes.

MARITIME TAX REFORM

We believe that any consideration of the state of the United States merchant fleet in foreign commerce should include an examination of America's tax laws and how they apply to U.S.-flag shipping and to American maritime workers. We agree wholeheartedly with President Obama that America's tax laws and policies should encourage, and not discourage, investment in the United States and the employment of American workers. We similarly applaud the President's recent announcement of plans to significantly increase U.S. exports. We believe that U.S.-flag shipping can play a role in this effort and can and should be a provider of ocean transportation services to bring American goods to overseas markets.

We believe very strongly that Congress and the Administration should explore a number of proposals that can help increase the competitiveness of U.S.-flag shipping in the foreign trades, and thereby increase American jobs. As funding is increased to support export financing and as the President's newly-appointed Export Cabinet Group works to promote the sale of U.S. goods abroad, we would urge that the same effort be given to create the economic climate that encourages the utilization of U.S.-flag shipping.

To this end, we believe that there are changes that should be made in our tax laws that can foster the growth of the United States maritime industry, preserve and create jobs for American maritime workers, and help reduce the disparity in tax treatment that gives foreign flag vessels and their crews a significant economic advantage over United States-flag vessels and their American citizen crews as they compete for the carriage of commercial cargoes.

We would note at the outset that we greatly appreciate the support the Members of this Subcommittee gave for the enactment in 2004 of tonnage tax legislation for U.S.-flag vessels. Enacted as part of the American Jobs Creation Act of 2004, the tonnage tax alternative to the normal corporate income tax system was made available to U.S.-flag vessels operating exclusively in the U.S. foreign trades or in the domestic trades for less than 30-days in each year.

The tonnage tax is intended to help American vessels compete on a more equal footing in the international shipping arena. A significant number of foreign flag

and foreign crewed vessels had already enjoyed the advantages of a tonnage tax and many other foreign flag and foreign crewed vessels operated in what is essentially a tax-free environment, enabling them to capture approximately 95 percent of all the commercial cargo entering and leaving our country. In response, Congress wisely enacted the tonnage tax, eliminating one of the tax-related disincentives to operating vessels under the U.S.-flag with U.S. citizen crews.

Nevertheless, as important as the applicability of the tonnage tax is, it is equally important that Congress build on this provision and explore other tax-related provisions that encourage the operation of vessels under the United States-flag and the employment of American mariners.

For example, the limitation that precludes vessels that operate in the domestic trades for more than 30 days from using the tonnage tax for their U.S.-flag operations in the foreign trade should be eliminated as called for in HR 3049. We ask that you support this legislation and work with us for its enactment this year.

The existing 30-day limitation precludes United States shipping companies, which operate vessels in both the foreign and domestic trades, from benefiting from the tonnage tax when it competes against foreign flag vessels in the international trades. We are convinced that unless the 30-day limitation is removed, domestic shipping companies, including those with an experienced record of operating vessels under the U.S.-flag with American crews, will be effectively precluded from successfully expanding their operations into the U.S. foreign trades and recapturing a share of America's trade for American ships. On the other hand, removing the 30-day limitation will help achieve the primary objectives of the tonnage tax, namely, retaining, attracting and expanding U.S.-flag vessel operations.

Another change in the tax code that we support is to extend the existing foreign source income exclusion in section 911 of the Internal Revenue Code to American merchant mariners working commercial vessels operating in the foreign trade. At present, section 911 allows every U.S. citizen working outside the United States – but not American mariners working aboard vessels operating outside U.S. waters – to exclude up to $80,000 in income from their Federal tax.

This is neither a new issue nor a new proposal. In fact, when he introduced the Merchant Marine Cost Parity Act of 2001, Congressman James Oberstar argued that "U.S. tax laws do not treat U.S. seamen the same as we treat other U.S. citizens working overseas. . . [my legislation] helps to decrease the cost of operating on a U.S.-flag vessel by granting seamen working on U.S.-flag vessels in the foreign trade the same exclusion from taxation on their first $80,000 in income as we grant every other U.S. citizen working overseas."

More recently, a report prepared for the United States Maritime Administration by HIS Global Insight, Inc. and released on January 7, 2009 noted that "Most major nations, including traditional maritime nations with developed economies similar to our own as well as flag of convenience nations, either do not tax or sharply reduce taxes on the income of their mariners in international shipping."

The report concluded that the "Adoption of the merchant mariner exemption would reinforce the tonnage tax incentives enacted in 2004 by reducing the significant competitive disparity in tax burdens by granting merchant mariners tax status similar to that available for nearly all other Americans who work overseas. The exemption would also help U.S.-flag operators compete by reducing tax and manning costs and would increase mariner recruitment and retention . . . "

DOMESTIC SHIPPING REQUIREMENTS

There is one other major area of U.S. maritime policy that we would like to raise. Specifically, I am referring to the body of law commonly referred to as the Jones Act and the requirement that vessels operating between American ports must be built in the United States, owned by United States citizens, crewed by American mariners, and operated in accordance with all U.S. rules, regulations and tax obligations.

We believe very strongly that the construction of vessels in the United States and the operation of these vessels by American citizens for the domestic trades ensure that these maritime and related jobs will not be outsourced and lost to foreign shipyard and seafaring workers. The full enforcement of the Jones Act helps to

guarantee that our nation will have the domestic shipyard mobilization base and the American merchant mariners available to support Department of Defense requirements. Equally important, the full implementation and enforcement of the Jones Act means that the waterborne transportation of America's domestic commerce will not fall under the control of foreign shipping interests but will instead remain under the control of American companies and American crews – American crews who, unlike foreign mariners, are subject to U.S.-government imposed background and security checks as a means to guard against maritime related terrorist incidents.

There are a number of things that we believe Congress can and should do in order to strengthen the domestic maritime industry.

First, Congress should enact legislation to eliminate the double taxation of waterborne commerce moving between American ports. This discriminatory treatment of waterborne cargo under the Harbor Maintenance Tax (HMT) serves as a major impediment to the creation of a short sea shipping marine highway system in the United States. As applied today, the HMT is imposed on cargo entering the United States from an overseas market. If this cargo is then reloaded onto another vessel for transportation along our coasts to another U.S. port, it is taxed again upon its arrival at this second U.S. destination. This double taxation of waterborne cargo under the HMT discourages shippers from using vessels to supplement their rail and truck traffic, thereby increasing congestion on the roads and rails.

We appreciate your efforts Mr. Chairman, and the efforts of many members of this Subcommittee to rectify this situation. We will continue to work with you and your colleagues on the Ways and Means Committee to achieve the enactment of this legislation this year.

Second, Congress should support the Title XI ship construction loan guarantee program and appropriate the funds necessary for this program. The Title XI program is essential to assist shipping companies to obtain the commercial financing they need to build, upgrade and expand their fleets in American shipyards. We would encourage this Committee and the Congress to examine ways to help the Title XI program work more efficiently to achieve its critically

important objectives. For example, it has been the policy of the Maritime Administration not to approve a Title XI application until and unless the funds sufficient to support the Title XI award had first been appropriated. We believe the Maritime Administration should revisit this policy, and consider granting approval of applications subject to the subsequent appropriation of funds. In so doing, Congress will know that the funds it appropriates will in fact be used to construct vessels in the United States and to put Americans to work.

We further believe the Maritime Administration should consider an expedited Title XI application review process for ship construction projects in which the applicant is seeking to replace a vessel with a newer vessel on a route it has served. We believe this will help American shipping companies upgrade and modernize their fleets, creating even greater economic and environmental benefits for the United States.

Finally, we would ask that Congress enact legislation that would eliminate another anomaly in the tax law that impedes the ability of American companies to repair their vessels in United States shipyards. Under existing law (Title VI of the Merchant Marine Act of 1936), American companies are able to establish a tax deferred Capital Construction Fund (CCF) in order to accumulate the capital necessary to build vessels in the United States. Unfortunately, the statute does not allow a company to withdraw its funds without penalty from a CCF to be used for the maintenance and repair of its vessels in an American shipyard. Expanding the permissible use of CCF funds to include maintenance and repair will help reduce the outsourcing of business and jobs from the domestic ship repair industry to the benefit of the foreign ship repair industry.

CONCLUSION

If Congress and the Administration believe as we do that the economic and military security of the United States are best served if our country has a strong, competitive U.S.-flag shipping capability, there are a number of important and innovative steps that can be taken to achieve this objective. We have raised what we consider to be many of the most important, immediate steps that should be

considered, and we look forward to working with you Mr. Chairman and your Subcommittee on these and other essential maritime initiatives.